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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,241	01/27/2004	Rudolf Reitberger	DT-6744	4170
30377	7590	04/03/2006	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			WINDLEY III, WILLIAM R	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/766,241	Applicant(s) REITBERGER, RUDOLF	
	Examiner William Windley III	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

2. Claim 2 is objected to because of the following informalities: on line 3 "groove" should be – grooves --. Appropriate correction is required.
3. Claim 5 is objected to because of the following informalities: on line 2 –of— should be inserted before the word "extruded". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "at least partially" in claim 1 is a relative phrase, which renders the claim indefinite. The term "at least partially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 3 recites "...completely inwardly..." as written this is unclear what is meant by "completely inwardly".

Claim 3 recites the limitation "said undercut grooves" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Hoffman.

Regarding claim 3 Hoffman discloses an axially extending guide section, wherein said undercut grooves (48) are spaced completely inwardly from said toothing.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1,2, are rejected under 35 U.S.C. 103(a) as being unpatentable over Reitberger, USP 5,549,390, and further in view of Hoffman, USP 3,888,340.

Reitberger discloses all of the claimed subject matter in a similar device comprising a(n): axially extending toothed rack (10), an axially extending outwardly open receiving groove (9), and having toothing (11) facing outwardly.

Reitberger does not disclose a receiving groove having opposite sides each being inwardly undercut with a groove edge of said receiving groove at least partially secured in said undercut.

Hoffman teaches a receiving groove having opposite sides (Figure 1) each being inwardly undercut (48) with a groove edge of said receiving groove at least partially secured in said undercut for the purpose of providing for a means to guide and retain the rack section (Column 4, lines 5-15).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Reitberger and provide a receiving groove having opposite sides each being inwardly undercut with a groove edge of said receiving groove at least partially secured in said undercut, as taught by Hoffman, for the purpose of providing for a means to guide and retain the rack section (Column 4, lines 5-15).

Regarding claim 2 Hoffman discloses two undercut axially extending grooves each arranged to receive one of said groove edges.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reitberger in view of Hoffman as applied to claim 1, and further in view of Maffeis and in further view of Hess.

Reitberger does not disclose wherein said guide section is formed of extruded aluminum and said toothed rack is formed of steel.

Regarding claim 5 Maffeis teaches the use of a guide section formed of extruded aluminum for the purpose of it being lightweight and its ease of manufacture (column 2, lines 28-31).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Reitberger in view of Hoffman and use a guide section formed of extruded aluminum, as taught by Maffeis, for the purpose of it being lightweight and its ease of manufacture (column 2, lines 28-31).

Hess teaches a toothed rack formed of steel for the purpose of being of simple shape and wear resistant (column 1, lines 67-68 and column 2, line 1).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Reitberger in view of Hoffman and use a toothed rack formed of steel, as taught by Hess, for the purpose of being of simple shape and wear resistant (column 1, lines 67-68 and column 2, line 1).

Allowable Subject Matter

10. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Windley III whose telephone number is 571-272-6460. The examiner can normally be reached on 8:30 AM to 5:30 PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3682

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William Windley III
03/27/2006



RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER